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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/037,384      | 12/20/2001  | JoAnn Adele Brooks   | 17,055              | 6804             |

7590 03/31/2004

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| EXAMINER |
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BEFUMO, JENNA LEIGH

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| ART UNIT | PAPER NUMBER |
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1771

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/037,384             |  | BROOKS, JOANN ADELE |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Jenna-Leigh Befumo     |  | 1771                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) 35-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-19 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on January 20, 2004, has been entered. Claims 20 – 34 have been cancelled. Claims 1, 10, 12, 13, and 16 have been amended and claims 35 – 49 have been added. Therefore, the pending claims are 1 – 19 and 35 – 49.

2. The 35 USC 102 and 35 USC 102/103 rejections based on Brennan et al. (6,361,784) and Pung et al. (WO 99/66793) are withdrawn since Brennan et al. and Pung et al. fail to teach using a cocopolyglucose or arginine cocoate as the surfactant in the cleaning composition. However, a new rejection based on these references is set forth below.

3. The 35 USC 103 rejection based on Skiba et al. (5,956,794) is withdrawn since Skiba et al. fails to teach using a cocopolyglucose or arginine cocoate as the surfactant in the cleaning composition. However, a new rejection based on Skiba et al. is set forth below.

### ***Election/Restrictions***

4. Newly submitted claims 34 – 49 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly added claims drawn to a method of using the claimed product. However, the product can be used by a different process than the one claimed, i.e., to clean a surface without heating the article prior to using. Thus, the process of using the product is distinct from the product itself.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35 – 49 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1 – 3, 10, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan et al. in view of Rochon et al. (6,432,395).

The features of Brennan et al. have been set forth in the previous Office Action. While Brennan et al. discloses using surfactants in the cleansing composition, Brennan et al. fails to teach using a cocopolyglucose or an arginine cocoate as the surfactant. Rochon et al. is drawn to cleansing compositions. Rochon et al. discloses that Eucarol AGE-EC, a type of cocopolyglucose, is a preferable surfactant in cleansing solutions because it is surprisingly effective in enhancing the foam level and stability of the cleaner (column 4, lines 49 – 57). Therefore, it would have been obvious to one of ordinary skill in the art to use the cocopolyglucose surfactant taught by Rochon et al. as the surfactant in the cleaning composition taught by Brennan et al. since Rochon et al. discloses that the cocopolyglucose is effective in enhancing foam level and stability in a cleanser.

7. Claims 1 – 3, 5, 7 – 10, and 13 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pung et al. in view of Rochon et al.

The features of Pung et al. have been set forth in the previous Office Action. While Pung et al. discloses using surfactants in the cleansing composition, Pung et al. fails to teach using a cocopolyglucose or an arginine cocoate as the surfactant. The features of Rochon et al. have been set forth above. Rochon et al. discloses that Eucarol AGE-EC, a type of cocopolyglucose, is a preferable surfactant in cleansing solutions because it is surprisingly effective in enhancing

foam level and stability of the cleaner (column 4, lines 49 – 57). Therefore, it would have been obvious to one of ordinary skill in the art to use the cocopolyglucose surfactant taught by Rochon et al. as the surfactant in the cleaning composition taught by Pung et al. since Rochon et al. discloses that the cocopolyglucose is effective in enhancing foam level and stability in a cleanser.

8. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pung et al. and Rochon et al. as applied to claims 1 and 10 above, and further in view of Skiba et al. (5,956,794).

Claims 4 and 11 are rejected for reasons set forth in section 11 of the previous Office Action.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pung et al. and Rochon et al. as applied to claim 1 above, and further in view of Sun et al. (WO 01/48025 A1).

Claim 6 is rejected for the reasons set forth in section 12 of the previous Office Action.

10. Claims 1 – 5, 7 – 12, and 14 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skiba et al. in view of Rochon et al. and Sherry et al. (WO 01/23510).

The features of Skiba et al. and Sherry et al. have been set forth in the previous Office Action. The rejection set forth in the previous Office Action fails to teach using a cocopolyglucose or an arginine cocoate as the surfactant. While Skiba et al. discloses using a surfactant in the cleaning composition, Skiba et al. fails to teach that the surfactant a cocopolyglucose or an arginine cocoate. The features of Rochon et al. have been set forth above. Rochon et al. discloses that Eucarol AGE-EC, a type of cocopolyglucose, is a preferable surfactant in cleansing solutions because it is surprisingly effective in enhancing foam level and

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stability of the cleaner (column 4, lines 49 – 57). Therefore, it would have been obvious to one of ordinary skill in the art to use the cocopolyglucose taught by Rochon et al. in the cleaning composition taught by Pung et al. since Rochon et al. discloses that the cocopolyglucose is effective in enhancing foam level and stability in a cleanser.

***Allowable Subject Matter***

11. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach or fairly suggest using an arginine cocoate surfactant as a surfactant in a cleansing composition comprising a fragrance, moisturizer, and preservative. Castillo et al. (6,284,749) discloses that amino acid soaps including arginine cocoate can be used in topical compositions in combination with an antifungal acid and a chelating agent as a preservative system. Thus, it would not be obvious to use the arginine cocoate composition as taught by Castillo et al. in a composition having a separate preservative.

***Response to Arguments***

13. Applicant's arguments filed January 20, 2004 have been fully considered but they are not persuasive. With respect to the Applicant's arguments that the prior art does not teach that the article is heatable to a select temperature while maintaining chemical stability, it is noted that the claim as written is not positively claiming an article which has been heated or is in the heated state. The Applicant only claims that the fabric is able to be, or capable of being, heated. It has been held that the recitation that an element is "capable of" performing a function is not a

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positive limitation, but only requires the ability to so perform. It does not constitute a limitation in the patentable sense. *In re Hutchison*, 69 USPQ 138. Therefore, the limitation is not given patentable weight at this time. Further, it is noted that the prior art teaches using the same materials and therefore, would have the same properties with respect to chemical stability, as the claimed article. Thus, the rejection is maintained.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo  
March 22, 2004



CHERYL A. JUSKA  
PRIMARY EXAMINER